



August 2024

Hon'ble Supreme Court of India holds that judicial role encompasses the duty to direct the Executive branch to review the working of the statutes and audit the statutory impact

The Hon'ble Supreme Court of India ("**Supreme Court**"), in a recent judgment dated July 30, 2024¹ in *Yash Developers vs. Harihar Krupa Co-operative Housing Society Limited*², while examining the provisions of Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971 ("**Maharashtra Slum Areas Act**") *vis-à-vis* scope of judicial review against an order passed by the Apex Grievance Redressal Committee ("**AGRC**") under Section 13 of the Maharashtra Slum Areas Act, *inter alia* held that:

1. assessment of the working of the statute to realise if its purpose and objective is achieved or not is the implied duty of the Executive branch;
2. judicial role encompasses the duty to direct the Executive branch to review the working of the statutes and audit the statutory impact; and
3. judicial review is ineffective until and unless duty is identified with accountability.

Brief Facts

1. In 2003, Yash Developers ("**Appellant**") was appointed as a developer by Harihar Krupa Co-Operative Housing Society Limited ("**Respondent No. 1**") to develop a slum rehabilitation building ("**Project**") under the Development Agreement dated August 20, 2003 ("**Development Agreement**"). However, owing to the inordinate delay of more than 16 (sixteen) years (i.e., from 2003 to 2019) in commencing the construction of the Project, the Development Agreement in favour of the Appellant was terminated by the order dated August 4, 2021 passed by AGRC ("**Order**").
2. Aggrieved by AGRC's Order, the Appellant challenged the said Order in Writ Petition (L) No. 18022 of 2021 filed before the Ld. Bombay High Court ("**Bombay HC**"). On October 14, 2022, Bombay HC dismissed the Appellant's writ petition on facts as well as on law, while observing the limited scope of judicial review under Article 226 of the Constitution of India against the decision of the statutory authority such as AGRC.
3. Thereafter, the Appellant challenged the judgment of Bombay HC before the Supreme Court in the present civil appeal.

¹ P.S. Narasimha and Aravind Kumar, JJ.

² 2024 SCC OnLine SC 1840. Civil Appeal No. 8127 of 2024 and connected matter

Issues

1. The following issues fell for consideration before the Supreme Court:
 - a) the scope of judicial review against an order under Section 13 of the Maharashtra Slum Areas Act; and
 - b) Accountability of officers exercising power coupled with duty under Section 13 of the Maharashtra Slum Areas Act.
2. Apart from the aforesaid issues, the Supreme Court also dealt with:
 - a) the submissions of the parties on the facts of the case since Appellant had argued the case only on the facts; and
 - b) issue of performance audit of statute.

Analysis and observations of Supreme Court

While upholding the decision of AGRC and the Bombay HC, the Supreme Court dismissed the Appellant's civil appeal *inter alia* observed and held as under:

1. the submissions of Appellant regarding 16 (sixteen) years delay in the project, the Supreme Court opined that:
 - a) delay from 2003 to 2011, delay of 8 (eight) years in resolving disputes with a competing builder cannot be a justification under any circumstance;
 - b) delay from 2011 to 2014, it was for Appellant as a developer to make all the necessary arrangements for environmental clearances while other sanctions and permissions are pending;
 - c) delay from 2014 to 2019, non-cooperation of some of the members cannot be a ground for delaying the project; and
 - d) delay from 2015 to 2017, findings of the AGRC and Bombay HC are very clear wherein it was correctly held that the delay caused due to the sanction of the draft development plan for the construction of the road cannot be a justification for delaying the project;
2. case after case, the Bombay HC has been ruling that, in respect of the Maharashtra Slum Areas Act, (a) the developer is duty-bound to complete the project within the stipulated time; and (b) the Slum Rehabilitation Authority has not merely the power but a broader duty to ensure that the developer completes the project within time. However, the said rulings have not had the desired impact, much less compliance. The reason is that, neither the developer nor the authority is asked to face the consequences of their derelictions. Until and unless the duty is identified with accountability, judicial review is ineffective.
3. The Maharashtra Slum Areas Act came into being in 1971 with the intend to materialize the constitutional assurance of dignity of the individual by providing basic housing, so integral to human life. However, for over 5 (five) decades, the Bombay HC has been exercising judicial review jurisdiction, disposing of writ petitions raising claims or challenges to the exercise of powers or dereliction of duties by authorities under the Maharashtra Slum Areas Act. Such propensity and the proclivity of the statute to generate litigation are worrisome. There seems to be a problem with the statutory framework.
4. While reviewing and assessing the implementation of a statute, is an integral part of Rule of Law, assessment of the working of the statute to realise if its purpose and objective is achieved or not is the implied duty of the executive government. The purpose of such review by courts is to ensure that a law is working out in practice as it was intended. If not, to understand the reason and address it quickly. It is in this perspective and in recognition of this obligation of the executive government that the constitutional courts have directed governments to carry performance/ assessment audit of statutes or has suggested amendments to the provisions of a particular enactment so as to remove perceived infirmities in its working.

5. One of the functions of the judiciary is to facilitate access to justice and ensure the effective functioning of constitutional bodies. In this role, the judiciary does not review executive and legislative actions, but only nudges and provides impetus to systemic reforms. The facilitative role is not just inspired from the institutional role that the judiciary perceives for itself but is also a directive of many of the fundamental rights in Part III of the Constitution and the cherished preambular vision of justice-social, economic and political.

Conclusion

1. In respect of the duty of judiciary and Executive branch in respect of working of the statute, Supreme Court held as under:
 - a) assessment of the working of the statute to realise if its purpose and objective is achieved or not is the implied duty of the Executive branch;
 - b) judicial role encompasses the duty to direct the Executive branch to review the working of the statutes and audit the statutory impact; and
 - c) judicial review is ineffective until and unless duty is identified with accountability.
2. The judgment of the Supreme Court underscores the constitutional court's duty that while exercising judicial review, the court's ought to:
 - a) strike a delicate balance, by ensuring that justice is accessible and that the Executive branch remains accountable for the effective implementation of laws. This will ensure that executive actions are in accordance with the law of the land and the legislative intent.
 - b) intervene when necessary and to direct the executive to reassess and review the working of the statutes and audit the statutory impact, and act as a facilitator of '*access to justice*', one of the roles of the judiciary, especially the constitutional courts.

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